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EXAMINER

FISCHER, JUSTIN R

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 07/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/083,296

Applicant(s)

SUZUKI, SEIJI

Examiner

Justin R. Fischer

Art Unit

1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 5-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 14-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As currently drafted, claims 14 and 15 describe diametrically opposed longitudinal lines (appear to be 17 and 18 in Figure 2) that lie on a second bisecting plane that is perpendicular to a first bisecting plane. It is unclear how the planes, which appear to correspond to the longitudinal lines 17 and 18, define perpendicular planes. Applicant is asked to clarify the claimed invention without the introduction of new matter.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting

Art Unit: 1733

directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1, 3, 5, 10, 14, 16, and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Van Eperen (US 6,235,137, of record). Van Eperen is applied in the same manner as set forth in the Non-Final Rejection mailed on January 27, 2005.

As best depicted in Figure 13, Van Eperen discloses a method of securing an elastic member to a sheet material using an adhesive, wherein said adhesive is continuously applied on the peripheral surface of the elastic member in an undulating pattern about the axis of strand member, wherein said undulating pattern is seen to constitute a sine curve shape. Also, as depicted in Figure 13, the undulating pattern has a uniform cycle. It is emphasized that Figure 13 clearly depicts the adhesive as having a drooped portion that extends further than the peripheral portion of the strand member (both on the underside or back side of the strand member and the front side of the strand member)- this clearly suggests that the height of the undulation (in a developed view of the peripheral surface of the strand) would be substantially equal to or greater than the circumferential length of the strand member (over a given period or cycle).

As to claim 3, the claim is directed to both the use and non-use of tension as pertains to the sheet material and as such, Van Eperen anticipates this claim. It is further noted that Van Eperen suggests that the sheet material can be folded to enclose the elastic member, which suggests a certain degree of tensioning.

Art Unit: 1733

Regarding claim 5, the method of Van Eperen is directed to a variety of manufactured articles, including disposable articles such as disposable diapers and feminine care products.

With respect to claim 10, as best depicted in Figure 13, completely encircles the periphery of the strand member in making the sine curve shape.

Regarding claims 14 and 16, the adhesive of Van Eperen is deposited in cycles, each cycle having a starting point on a first longitudinal line and following a path that goes beyond a second longitudinal line that is diametrically opposite said first longitudinal line. This is particularly evident in Figure 13, in which the adhesive extends over a first and second longitudinal line (front side and rear side) within a given cycle or wavelength.

With respect to claim 18, either side of the elastic member can be viewed as defining the "first longitudinal line".

5. Claims 6-9, 11, 15, 17, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Kwok (US 6,077,375, of record). Kwok is applied in the same manner as set forth in the Non-Final Rejection mailed on January 27, 2005.

As best depicted in Figures 2a and 3, Kwok '375 discloses a method of applying adhesive (40) to an elastic strand (30) and subsequently bonding said strand to a sheet material, wherein said adhesive is applied as a continuous, undulating pattern having a uniform cycle. In particular, the adhesive pattern depicted in the above noted figures is an S-shape. Furthermore, Kwok '375 specifically states that the fiber portions 42 and 44 extend sufficiently beyond the corresponding sides of the strand member so as to

Art Unit: 1733

adhere to an underside of the strand (Column 4, Lines 51-60 and Column 5, Lines 3-14)- this is particularly evident from Figure 2a in which the adhesive is depicted as being arranged (on the underside) at the point defined by an axis perpendicular to the longitudinal direction of the strand. Thus, it is clear that the drooped portions on opposing sides would be adjacent one another (on the underside) and thus would define, at a minimum, an assembly in which the height of the undulation (in a developed view of the peripheral surface of the strand) would be substantially equal to the circumferential length of the strand.

As to claim 8, the claim is directed to both the use and non-use of tension as pertains to the sheet material and as such, Kwok '375 anticipates this claim.

With respect to claim 9, Kwok '375 is directed to a process for making a wide variety of fluid absorbing articles, including diapers (Column 1, Lines 15-25).

Regarding claim 11, it is evident from Figures 2a and 3 that the adhesive encircles the entire periphery of the strand.

With respect to claims 15 and 17, the adhesive of Kwok '375 is clearly existent over a first and second longitudinal line within a given cycle or wavelength (longitudinal lines represent the longitudinal axis on the front side and the rear side).

Regarding claim 19, either side of the elastic member can be viewed as defining the "first longitudinal line".

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1733

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van Eperen. As best depicted in Figure 13, the adhesive material is deposited on a strand member in a sine curve shape, wherein drooped portions that extend beyond the periphery of the strand member are present. These drooped portions are captured by the strand member in such a manner that substantially the entire strand member is covered. While the reference fails to provide an express disclosure for an adhesive deposition in which the undulation height is greater than the circumferential length of the strand member, it is clearly evident that the width and amplitude of the adhesive will dictate what regions of the strand are covered by the adhesive material. Van Eperen clearly states that the traversing distance 38 (Figure 12) can be varied from a minimum of 0.1 cm up to a maximum of 0.6 cm (Column 20, Lines 34-47). In view of this disclosure, one of ordinary skill in the art at the time of the invention would have found it obvious to form an assembly in which the undulation height is greater than the circumferential length of the strand member (embodiments having high traverse distance) absent any conclusive showing of unexpected results. In such an instance, the bonding area between the strand member and the substrate is increased.

8. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kwok '375. In describing the adhesive application, Kwok '375 states that the drooped portions extend sufficiently outwardly beyond the corresponding sides of the strand so that adhesive is arranged over the underside of the strand (best depicted in Figure 2a). The

Art Unit: 1733

reference further teaches that the adhesive migrates along the sides of the strands and across the underside thereof to at least partially coat all sides thereof (Column 5, Lines 5-30). While it is unclear if the first drooped portion overlaps (or goes beyond) a second drooped portion (in an underside region of Figure 2a), it is well recognized that it is highly desirable to increase the bonding area between the strand member and the substrate. It is emphasized that Kwok '375 does state that the adhesive (drooped portion) extends across the underside of the strand- one of ordinary skill in the art at the time of the invention would have found it obvious to deposit the adhesive such that the drooped portions overlapped (results in greater undulation height as compared to the circumferential length of the strand member) in order to obtain the above noted increased bonding area, there being no conclusive showing of unexpected results to establish a criticality for the claimed arrangement. Lastly, it is noted that Kwok '375 does recognize the capability of depositing a drooped portion (in the under side) beyond a plane defined by the longitudinal axis of the strand (Column 5, Lines 10-15).

Response to Arguments

9. Applicant's arguments filed April 25, 2005 have been fully considered but they are not persuasive.

Regarding Kwok '357, Applicant initially contends that the underside could be considered to be the circumference of the strand that extends below a line running along a side of the strand but not reaching the line that defines the bottom of the strand. Independent of how the language of Kwok '357 is interpreted, it is clearly evident from Figure 2a that the adhesive, at a minimum, reaches a line that defines the bottom of the

Art Unit: 1733

strand. It is further noted that the claim as currently drafted only requires that the height of the undulation is "substantially equal to" or larger than a circumferential length of the elastic member.

Applicant further argues, regarding Kwok '357 and Van Eperen that a central issue is whether the adhesive of either reference touches or goes beyond a "longitudinal line" that runs along the underside of the elastic member. The position with respect to Kwok '357 has been set forth above. As to Van Eperen, Figures 12A and 13 suggest that the adhesive, at a minimum, reaches said second longitudinal line.

Applicant further argues that there are two aspects to claims 14 and 15. First, it is clearly evident that the path of Kwok '357 and Van Eperen cross diametrically opposed lines. Second, in each instance, the path of the adhesive does go beyond "another point" on the first longitudinal line. In Van Eperen, the first longitudinal line can be viewed as the facing axis and the second longitudinal line can be viewed as the underlying axis. Thus, taking a point on the first longitudinal line (and going left to right), the path of the adhesive drops to a minimum, crosses over the first longitudinal line (seen to constitute another point on the first longitudinal line), covers the backside while crossing the second longitudinal line, drops to a minimum, crosses over the second longitudinal line again, and extends towards to the first longitudinal line (also seen to constitute another point on the first longitudinal line). This adhesive path is also present in the elastic member of Kwok '357. It is not believed that the claims as currently drafted specifically define the adhesive path (within a given cycle- e.g. P-X) of the

Art Unit: 1733

claimed invention. It is suggested that applicant specifically define the adhesive path defined between points P and X in Figure 2.

As to claims 18 and 19, the adhesive paths in Van Eperen and Kwok '357 are symmetrical about the respective axis and as such, any arrangement can be viewed as positioning the first longitudinal line adjacent the topsheet.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Justin R. Fischer** whose telephone number is **(571) 272-1215**. The examiner can normally be reached on M-F (7:30-4:00).

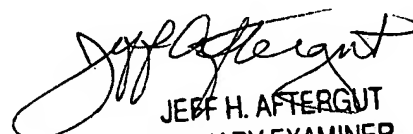
Art Unit: 1733

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on (571) 272-1156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Justin Fischer

July 5, 2005


JEFF H. AFTERGUT
PRIMARY EXAMINER
GROIP 1300